

## 46 Am. Jur. 2d Judges § 76

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### Judges

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### VIII. Liabilities

#### A. Civil Liability

#### 3. Effect of Jurisdiction or Lack Thereof

## § 76. Acts of judge under invalid law or in excess of jurisdiction as subject to immunity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

The scope of judicial jurisdiction generally is broadly construed,<sup>1</sup> such that judges who possess jurisdiction are not deprived of absolute immunity by the mere fact that they act upon a void or invalid law,<sup>2</sup> and absolute immunity will apply to judges acting in the exercise of their judicial functions even if the acts are in excess of their jurisdiction or authority.<sup>3</sup> As a general matter, when a judge acts in an official judicial capacity and has personal and subject-matter jurisdiction over a controversy, the judge is exempt from civil liability even if the judge goes beyond, or exceeds, the judge's authority and acts in excess of jurisdiction.<sup>4</sup> Actions taken by a judge that are determined to be in excess of jurisdiction, resulting from an error in judgment, will not cause a judge to lose immunity.<sup>5</sup> A distinction must be observed between acts which are merely in excess of jurisdiction and those involving a clear absence of all jurisdiction over the subject matter.<sup>6</sup> Where there is clearly no jurisdiction over the subject matter, any authority exercised is usurped authority, and no excuse is permissible if the judge knows of the lack of authority.<sup>7</sup>

### Observation:

A judge pro tem who has jurisdiction to hear a case to its conclusion once the judge pro tem begins hearing evidence does not act in the clear absence of all jurisdiction in issuing a search warrant<sup>8</sup> or in refusing to issue a peace bond and a warrant for the arrest of one person, while issuing a warrant for another's arrest,<sup>9</sup> even though the judicial term has expired.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Where there is clearly no jurisdiction over the subject-matter, any authority exercised by the judge is a usurped authority, and for the exercise of such authority, where the want of jurisdiction is known to the judge, no excuse is permissible, under the doctrine of absolute immunity, for liability arising out of the exercise of such authority. *Viers v. Baker*, 841 S.E.2d 857 (Va. 2020).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 *In re Luna*, 152 B.R. 11 (Bankr. D. Mass. 1993); *Hall v. Jones*, 2015 Ark. 2, 453 S.W.3d 674 (2015).
- 2 *Carey v. Dostert*, 185 W. Va. 247, 406 S.E.2d 678 (1991).
- 3 *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); *Beepot v. J.P. Morgan Chase Nat. Corporate Services, Inc.*, 57 F. Supp. 3d 1358 (M.D. Fla. 2014), *affd*, 626 Fed. Appx. 935 (11th Cir. 2015).
- 4 *Borkowski v. Abood*, 117 Ohio St. 3d 347, 2008-Ohio-857, 884 N.E.2d 7 (2008).
- 5 *Borkowski v. Abood*, 117 Ohio St. 3d 347, 2008-Ohio-857, 884 N.E.2d 7 (2008).
- 6 *Dellenbach v. Letsinger*, 889 F.2d 755 (7th Cir. 1989); *Derringer v. Chapel*, 98 Fed. Appx. 728 (10th Cir. 2004).
- 7 *Dellenbach v. Letsinger*, 889 F.2d 755 (7th Cir. 1989).
- 8 *Hupp v. Hill*, 576 N.E.2d 1320 (Ind. Ct. App. 1991).
- 9 *Moore v. Taylor*, 541 So. 2d 378, 53 Ed. Law Rep. 348 (La. Ct. App. 2d Cir. 1989).
- 10 *Hupp v. Hill*, 576 N.E.2d 1320 (Ind. Ct. App. 1991); *Moore v. Taylor*, 541 So. 2d 378, 53 Ed. Law Rep. 348 (La. Ct. App. 2d Cir. 1989).

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